

REMARKS

Claims 1-37 are pending. The Office Action dated July 27, 2005 has been carefully considered. Claims 20-23 have been withdrawn from consideration in this Response. The Specification and Claims 2, 6-7, 13, 16, 19, 31, 34, and 37 have been amended in this Response. Reconsideration and allowance are respectfully requested in light of the following remarks.

Claims 1-37 stand restricted under 35 U.S.C. § 121. The Examiner identified three (3) species: the microelectromechanical (“MEMS”) switch of Figure 1, the MEMS switch of Figure 2, and the MEMS switch of Figure 3.

The Examiner has asserted a restriction requirement on the basis of a mere statement of conclusion that this application contains claims directed to three patentably distinct species. Applicants traverse the restriction requirement. The Examiner has not given reasons for insisting upon restriction (MPEP 808) by giving:

(A) the reasons (as distinguished from the mere statement of conclusion) why the inventions as claimed are either independent or distinct; and

(B) the reasons for insisting upon restriction therebetween as set forth in 808.01 or 808.02;

Nor has the Examiner shown by appropriate explanation (under MPEP 808.02 "Related Inventions") one of the following:

(A) separate classification of each distinct subject having attained recognition in the art as a separate subject for inventive effort, and also a separate field of search;

(B) a separate status in the art when the distinct inventions are classifiable together; or

(C) a different field of search;

Nor has the Examiner, in his letter for requiring restriction (MPEP 817):

(1) identified each group by Roman numeral;

(2) listed claims in each group;

(3) given a short description of the total extent of the subject matter claimed in each group, pointing out critical claims of different scope and identifying whether the claims are directed to a combination, sub-combination, process, apparatus, or product; and

(4) classified each group.

Applicants therefore request reconsideration of the restriction requirement.

Applicants provisionally elect with traverse, the embodiment of the MEMS switch shown in Figure 1 to prosecute in the present application as required by the Examiner. Applicants identify original Claims 1-6, 17-18, and 24-30 as reading upon the embodiment shown in Figure 1.

Furthermore, Applicants consider Claim 17 to be generic for the embodiments shown in Figures 1 and 2. Accordingly, Claim 17 and dependent Claim 18 read upon the embodiment of Figure 1, and Claim 17 and dependent Claim 19 read upon the embodiment of Figure 2. Claims 7-16, 17, 19, and 31-37 are directed towards a MEMS switch as shown in Figure 2; similar to the MEMS switch in Figure 1, but using a spring means to prevent the warping of the conductive beam. Applicants respectfully submit that the embodiments of Figures 1 and 2 are not patentably distinct species and request full allowance of Claims 1-19 and 24-37.

The Specification has been amended to describe reference numerals 105 and 203 from FIG. 1 and FIG. 2A, respectively. Accordingly, reference numeral 105 depicts an insulation layer as provided in Claims 2 and 4-5, and reference numeral 203 depicts an insulation layer as provided in Claims 8 and 10-11. As provided in the Claims this insulation layer can be Silicon Oxide (SiO_2) or Silicon Nitride (Si_3N_4). It is commonly known in the art that Silicon Oxide and Silicon Nitride are types of dielectric insulation layers. Therefore, Applicants respectfully submit that the amendments to the Specification are provided by the original Application, namely the Figures and the Claims.

Applicants respectfully submit that the content of the amendment to the Specification was described in the Application as filed, which is required under M.P.E.P. 2163.06.

Claims 7, 13 and 31 have been amended to better describe some embodiments in the original Application. The language “spring means” has been replaced with the language “*elastically deformable member*.” Applicants submit that “spring means” and “*elastically deformable member*” both describe reference numeral 206 in FIG. 2A and 2B, but “*elastically deformable member*” is a more accurate description. Accordingly, reference numeral 206 is an “*elastically deformable member*” which flexes and attempts to make contact with the control electrode when the beam is engaged. (Application page 8, lines 15-17).

Claims 6, 16, 30 and 37 have been amended to better describe some embodiments in the original Application. The language “when” has been replaced with the language “*at least during a portion of* when.” Accordingly, an ohmic contact is made *at least during a portion of* when the microscopic switch is engaged.

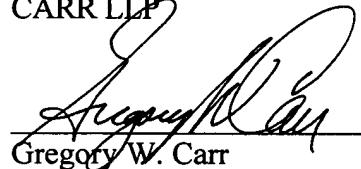
In Claim 2, the language “microscope switch” has been replaced by the language “*microscopic switch*.” In Claim 34, “wherein” has been deleted. Applicants contend that the rationale underlying these amendments bear no more than a tangential relation to any equivalence in question because the language has been amended merely to correct a typographical error. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 122 S.Ct. 1831 (2002).

Applicants have included a check in the amount of sixty dollars (\$60.00) to cover a one-month extension of time fee. In the event that any fees are due, the Commissioner is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-0605 of CARR LLP.

Should the Examiner deem that any further amendment is desirable to place this Application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

CARR LLP


Gregory W. Carr
Reg. No. 31,093

Dated: 9/27/05
CARR LLP
670 Founders Square
900 Jackson Street
Dallas, Texas 75202
Telephone: (214) 760-3030
Fax: (214) 760-3003